

In the High Court of Punjab and Haryana at Chandigarh

CRR-875 of 2023 (O&M)

Date of Decision: 01.06.2023

Rajesh

---Petitioner

versus

State of Haryana

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.S.Dhull, Advocate and
Mr. Sanjeev Majra, Advocate
for the petitioner

Ms. Dimple Jain, DAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through the instant petition is seeking setting aside of order dated 14.10.2022 whereby Additional District and Sessions Judge, Fast Track Court at Sonapat has dismissed application of the petitioner seeking release of motorcycle, mobile phone, sim card and registration certificate.

2. Learned counsel for the petitioner inter alia contends that petitioner has already been acquitted vide judgment dated 02.03.2022 passed by Additional District and Sessions Judge, Fast Track Court at Sonapat in FIR No. 261 dated 01/09.2019, under Sections 452, 365, 376DA, 506 IPC and Section 6 of POCSO Act,

registered at Police Station Sadar Gohana, District Sonapat. The police during the course of investigation had seized motorcycle, mobile phone, sim card and registration certificate.

The State has filed appeal against judgment of acquittal which cannot be a ground for denial of release of properties seized during the course of investigation. The petitioner is seeking release of motorcycle, mobile phone, SIM card and registration certificate which are prima facie perishable in nature and the Hon'ble Supreme Court has repeatedly reminded the courts to release the articles even during the course of trial.

3. Learned State counsel submits that State has filed appeal against acquittal, thus, mobile phone and SIM card may be relevant at the time of adjudication of appeal, thus, mobile phone and SIM card may not be released.

5. I have heard learned counsel for the parties and perused the record.

6. The Hon'ble Supreme Court while dealing with release of seized articles especially vehicles in **Sunderbhai Ambalal Desai vs. State of Gujarat (2002) 10 SCC 283** has directed the authorities to release articles expeditiously. The relevant extracts of the judgment read as:-

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

Vehicles

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

7. From the perusal of record, it is quite evident that petitioner vide judgment dated 02.03.2022 passed by Additional Sessions Judge, Fast Track Court, Sonapat has already been acquitted from all the charges. The petitioner was charged with commission of offence punishable under Sections 452, 365, 376DA & 506 of IPC and Section 6 of POCSO Act. The mobile phone and SIM card, while adjudicating appeal, to some extent may be relevant, however, motorcycle and its Registration Certificate cannot be kept in custody

for an indefinite period. It is well known fact that value of motorcycle depreciates with the passage of time.

8. In view of the aforesaid judgment of the Hon'ble Supreme Court, this Court finds it just, fair and reasonable to order to release motorcycle alongwith Registration Certificate. The present petition deserves to be partly allowed and accordingly allowed qua release of motorcycle alongwith Registration Certificate. The respondent is directed to release motorcycle alongwith its Registration Certificate subject to furnishing of bond to the satisfaction of trial court/Illaq Magistrate.

9. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

01.06.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

